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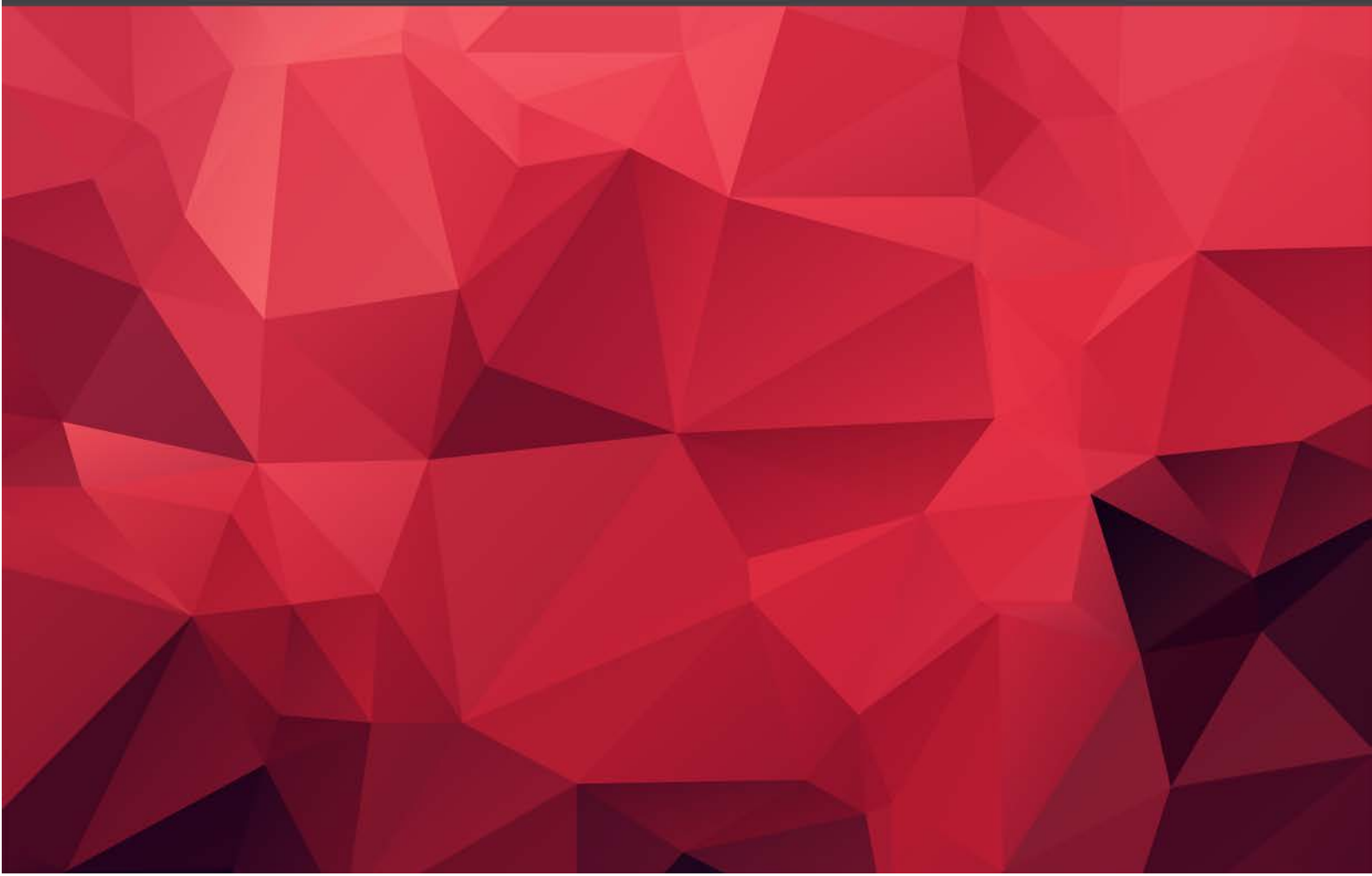
Archwilydd Cyffredinol Cymru
Auditor General for Wales

Report in the Public Interest – failures in financial management and governance – **Llanbrynmair Community Council**

Audit year: 2015-16 and 2016-17

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Mae'r ddogfen hon hefyd ar gael yn Gymraeg. This document is also available in Welsh.

The person who delivered the work was Deryck Evans, under the direction of Anthony Barrett.

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The Auditor General is unable to provide an opinion on the Council's Annual Returns for the financial years 2015-16 and 2016-17.

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Introduction

- 1 This report is issued in the public interest under Section 22 of the Public Audit (Wales) Act 2004 (the Act). I have issued this report to draw the public's attention to inadequacies in governance and financial management at Llanbrynmair Community Council (the Council). I believe it is important that the public has a full and proper awareness of the events concerning the Council.
- 2 I also consider it appropriate to give the Council an opportunity to demonstrate the important steps already taken to improve arrangements and to ensure that the risk of such governance failures recurring is reduced to a minimum. Furthermore, there are lessons to be learnt not just by the Council, but by all community councils in Wales.
- 3 The Council serves a small rural community located in north-west Powys. It typically spends around £10,000 annually and funds this primarily from its precept. The precept is raised as part of the council tax for the community. It employs one part-time member of staff to undertake the roles of Clerk and Responsible Financial Officer (the Clerk).
- 4 I believe it is important to mention, by way of context, that the Clerk, Mr Rab Jones, had experienced several health issues during the financial years within the scope of this report and also held three other part-time Clerk roles at the same time.
- 5 My audit work on town and community councils focuses on an annual return completed by the councils and submitted to auditors working on my behalf. The annual return contains the annual accounting statements that the council is required by law to prepare and an annual governance statement which sets out how the council has managed its financial affairs.
- 6 Delays in receiving the annual returns for 2015-16 and 2016-17 led the auditors working on my behalf to refer Llanbrynmair Community Council to me. I expanded the scope of my work due to the increased risk associated with late completion and submission of accounts. My audit work identified significant issues both in relation to the accounting statements and the annual governance statement. These are:
 - the Council has failed to maintain proper accounting records and to provide sufficient evidence for me to undertake the statutory audit. Therefore, I am unable to provide an opinion on whether or not the annual statement of accounts properly presents the Council's receipts and payments for the years of audit;
 - the Council's governance arrangements are inconsistent with the positive assertions it has made in its Annual Return.
- 7 As a consequence of the matters identified at audit, I am unable to conclude on whether or not the accounting statements properly present the Council's financial transactions. Furthermore, the deficiencies I have identified mean that in my view, the Council does not have adequate arrangements in place to secure economy,

efficiency and effectiveness in the use of its resources. Therefore, I will issue a qualified audit opinion for the 2015-16 and 2016-17 accounts.

- 8 My audit findings show long-standing inadequacies in governance and financial management at the Council and are considered in more detail in the remainder of this document.

The Council has failed to maintain proper accounting records and to provide sufficient evidence for me to undertake the statutory audit, so I am unable to provide an opinion on whether the annual accounts properly present the Council's receipts and payments for the years of audit

- 9 Community councils are required to maintain proper accounting records sufficient to show the council's financial transactions and to enable the RFO to prepare such accounting statements as are required under the Accounts and Audit (Wales) Regulations. The RFO must ensure that the accounting records are kept up to date and are maintained in accordance with proper practices.
- 10 My audit has identified several significant weaknesses and omissions in Llanbrynmair Community Council's records.
- 11 Proper practices as set out by the One Voice Wales/Society of Local Council Clerks' publication **Governance and accountability for local councils in Wales**, sets out that each council should have a cashbook or other form of financial ledger within which are recorded the council's financial transactions. The entries in the cashbook or ledger should be supported by original documentation such as invoices. This record should then be used as the basis for the annual accounts and should be reconciled to the council's bank account(s) to ensure its completeness and accuracy.
- 12 However, the Council does not have a cashbook or financial ledger. Instead, the Clerk has provided a list of transactions that has been prepared from the bank statements.
- 13 I have not been able to verify the completeness or accuracy of the schedule of transactions presented by the Clerk because:
- there are unexplained discrepancies between the annual return and the balance recorded on the 31 March 2015 bank statement;
 - some payments that have been approved in the Council's minutes do not appear to have been made;
 - some payments made do not appear to have been approved by the Council;
- and

- the supporting invoices and other original documents to support payments made are incomplete.
- 14 The Clerk responded to a request to provide the missing information with an explanation that for some payments supporting documentation did not exist or had been mislaid, and he was therefore unable to provide the missing information. Consequently, I am unable to conclude on whether or not the accounting statements properly present the Council's financial transactions.

The Council's governance arrangements are inconsistent with the positive assertions it has made in its Annual Return

- 15 In addition to presenting the accounts for a given year, the Annual Return requires the Council to make a formal declaration in relation to the arrangements it has in place for its governance and financial management. This is referred to as the Annual Governance Statement.
- 16 Whilst the actual wording of the Annual Governance Statement can vary from one year to another, it broadly covers the items ('assertions' or statements about the Council's governance) set out in **Exhibit 1**. **Exhibit 1** also shows the Council's response to those matters and my audit assessment.

Exhibit 1: Annual Governance Statement

Assertion	Council Response	Audit assessment
Both 2015-16 and 2016-17		
Properly prepared and approved the accounting statements.	Yes	No
Maintained and reviewed the effectiveness of an adequate system of internal control, including measures designed to prevent and detect fraud and corruption.	Yes	No
Taken steps to ensure there are no matters of non-compliance with laws, regulations and codes of practice.	Yes	No
Provided proper opportunity for the exercise of electors' rights in relation to the accounts.	Yes	No
Carried out an assessment of the risks facing the Council.	No	No
Maintained an adequate and effective system of internal audit.	No	No
Considered the financial impact of any litigation, liabilities or commitments, events or transactions.	Yes	Unable to conclude
Appropriate action has been taken in relation to internal and external audit reports.	No response	No

Assertion	Council Response	Audit assessment
2015-16 only		
Calculated and approved the budget requirement as required by law.	Yes	No
Received detailed financial reports on the Council's receipts and payments and financial position.	Yes	No
Ensured the Council's internal auditor is independent from the Council's decision-making process.	Yes	No
2016-17 only		
Registered as an employer with HM Revenue and Customs.	No	No
Maintained proper payroll records.	No	No
Adopted a Code of Conduct for members.	Yes	No

- 17 For the two audit years considered in this report, 2015-16 and 2016-17, the Council has completed the returns as above on the basis it is compliant with the expectations set out in both legislation and published guidance. The Council has not qualified its responses or provided explanations on areas where it is either deficient or working to secure improvements.
- 18 The governance disclosures made by the Council are therefore, in my view, inconsistent with the position reflected in its documentation.
- 19 It is clear to me that the Council has not taken sufficient steps to satisfy itself that its governance arrangements are effective and fairly disclosed. Council members have not sufficiently recognised or acted upon issues in relation to the adequacy of their governance arrangements.
- 20 The next section of this report sets out several deficiencies and weaknesses in the Council's arrangements that have been readily apparent during the audit.

The Council failed to submit its annual accounts for 2015-16 and 2016-17 to me for audit in accordance with the statutory timetable

- 21 Under Section 13 of the Act the Council must:
- make up its accounts each year to 31 March or such other date as the Welsh Ministers may generally or in any special case direct; and
 - ensure that its accounts are audited in accordance with the Act by the Auditor General for Wales.
- 22 The accounts are prepared in the form of a simple annual return which is sent to the Council each year. Regulation 15 of the Regulations requires that the Council approves the accounts before 30 June following the end of the financial year. The

Council must then send the accounts to the Auditor General and publish audited accounts by 30 September.

- 23 As **Exhibit 2** shows, the Council has not complied with the statutory timescales for submitting its accounts for audit for the 2015-16 and 2016-17 financial years.

Exhibit 2: dates of completion of the accounts

Financial year	Date accounts approved by the Council	Date submitted for audit
2015-16	30 August 2017	13 October 2017
2016-17	30 August 2017	13 October 2017

- 24 From my review of the Council's minutes, it appears to me that the Clerk did not provide the Council with a complete and balanced account of its performance in adhering to these deadlines. I wrote to the Clerk in August 2017 and met with the Clerk and chair on 13 October 2017.
- 25 While the Clerk's tardiness is a significant factor in the Council's failure to comply with its statutory responsibilities, the Council itself must take a degree of responsibility for this failure. I have found no evidence that the Council took any steps in relation to the overdue accounts.

There is insufficient evidence to confirm whether or not proper arrangements have been made for the exercise of public rights

- 26 Sections 30(2) and 31(1) of the Act make provision for public rights, i.e. for interested persons to inspect the accounts to be audited, and for electors to question the auditor about the accounts and to make objections before the auditor as to any matter in respect of which the auditor has a power to:
- apply for a declaration that an item of account is unlawful; and
 - any other matter in respect of which the auditor has the power to make a report under section 22 of the Act.
- 27 Regulation 17 requires the Body to give notice by advertisement to the public setting out the period during which the accounts and other documents are available for inspection.
- 28 I have not been provided with sufficient evidence to demonstrate that the Council complied with the requirements of the Act. Therefore, I have appointed 11 January 2019 as the date from which local electors may exercise their rights under the Act in relation to the accounts for 2015-16 and 2016-17.

The Council did not prepare a budget for 2015-16 or 2016-17 and did not approve the precept levied on Council tax payers for those financial years

- 29 The Local Government Finance Act 1992 requires councils to calculate and approve the annual budget. Section 41 of this Act allows councils to issue a precept, the basis of which is determined, in accordance with Section 50, by the calculation of the budget requirement.
- 30 Regardless of this statutory requirement, the budget is important as:
- it results in the setting of the precept for the year;
 - it gives the Council authority to spend money in accordance with approved spending plans and financial regulations; and
 - it provides a basis for monitoring progress during the year by comparing actual to planned spending.
- 31 The budget is a crucial element of effective financial management and accountability and, ultimately, reduces the amount of time councils spend managing their financial resources. In the absence of adequate budget setting and monitoring arrangements, councils are unable to effectively manage public funds and demonstrate compliance with statutory requirements.
- 32 In a written response to my initial findings, the Council stated that it does prepare a budget prior to setting its precept but notes that it will need to review its procedures to ensure compliance with The Local Government Finance Act 1992 and how the process is recorded in the minutes. During the course of my audit I was unable to find evidence that the Council prepared a budget for the 2015-16 or the 2016-17 financial years. There is no evidence of proper financial monitoring by the Council.
- 33 My examination of the Council's minutes identified that although the Council minutes record the receipt of the annual precept, there is no record that the Council approved the issuing of a precept to Powys County Council.

The Council has failed to maintain proper arrangements to administer payroll and PAYE, including the payment of the Clerk's income tax to HMRC

- 34 Most Community Councils, such as Llanbrynmair Community Council, employ one official to undertake the legally separate roles of the Clerk and RFO. The majority of these officers work part-time, their hours varying from one to two days per week, to a few hours per quarter in connection with Council meetings. The Clerk as a proper officer of the Council, is an employee of the Council. The Council should provide any employees with a contract document setting out the terms and conditions of employment. Written employment contracts should help provide clarity on the role and status of the Clerk and the remuneration arrangements for

the post. The Council should have ensured that it understood its responsibilities when employing the Clerk.

- 35 There is no written contract of employment between the Council and the Clerk that sets out the terms and conditions upon which the Clerk is employed.
- 36 As an employer, the Council must deduct Income Tax and employees' National Insurance Contributions (NICs) from employees' pay and send the amounts deducted to HM Revenue and Customs (HMRC) each month or quarter along with employers' NICs. This system is called Pay as You Earn (PAYE). PAYE deductions must be paid to HMRC. All employers must also keep payroll records.
- 37 My audit identified that the Clerk has received regular, quarterly payments described as 'costs'. Both the Clerk and the Council's chair confirmed that there is no written contract of employment. Therefore, although the Council's approval of the payments is recorded in the minutes, I am unable to confirm whether or not the Clerk has been paid appropriately. It is unclear whether PAYE deductions were made because no payments were made to HMRC.
- 38 Based on the evidence I have seen in respect of payroll and PAYE at the Council, I have concluded that proper payroll records have not been kept as required and PAYE deductions have not been paid to HMRC.

The Council has failed to maintain an adequate and effective system of internal audit

- 39 The Accounts and Audit (Wales) Regulations 2014 (the Regulations) require all community councils to ensure that they have an adequate and effective system of internal audit in place. Internal audit is an important part of the overall internal control framework. The internal auditor should be independent i.e. have no part in, the Council's decision-making process or any role in the maintenance of the accounting system and preparation of the annual accounts.
- 40 My audit confirmed that the Council had made no arrangements for internal audit for either 2015-16 or 2016-17. Had an auditor been engaged by the Council, it is likely that many of the deficiencies outlined in this report would have been identified at an earlier stage.

The Council has failed to keep minutes of its meetings in the form prescribed by law

- 41 The Council must by law keep minutes of its proceedings and they must be signed by the person presiding at the meeting at which the minutes are approved as an accurate record of the proceedings. The minutes must be entered in a book specifically kept for this purpose. Where the minutes are kept in a loose-leaf book, the pages must be consecutively numbered and initialled by the person signing the minutes at the time of signature.

42 My audit established that during 2015-16 and 2016-17, the Council did not ensure that the minutes were signed as a true record of the proceedings.

The Council has failed to comply with its legal duties to adopt a Code of Conduct for members and to maintain a register of members' interests

- 43 An essential part of any body's governance framework is the behaviour demonstrated by the members of that body. The Local Government Act 2000 created a new ethical framework for local government in Wales. It created a power for the Welsh Ministers to issue a model code of conduct to apply to members and co-opted members of all relevant authorities in Wales.
- 44 Local councils are required to adopt the Code in its model form in its entirety, but can make additions to the Code, provided these are consistent with the Model. The locally adopted Code is then integral to the individual council's governance framework.
- 45 My audit identified that the Council has not adopted a Code of Conduct for members.
- 46 While carrying out their duties, members need to decide if they have a personal interest, and, if so, whether they need to disclose it. Where they do have an interest that should be disclosed, the fact that there is an interest and the nature of that interest should be disclosed at meetings, when making written representations, including e-mails, and when making oral representations. This disclosure is required even if the interest is recorded on the Council's register of interests.
- 47 In its response to my initial findings, the Council stated that members' interests are recorded in the minutes of its meetings, but no separate register is kept.
- 48 Councils are required by section 81 of the Local Government Act 2000 to maintain a register of disclosed interests and to publish that register electronically.
- 49 My audit identified that the Council does not comply with the requirements of the Local Government Act 2000 and does not maintain a register of interests. Although members may be aware of the need to declare interests at meetings, the Council has failed to recognise that it must also maintain and publish a register.

The Council has not developed a website to enable it to publish notices and other information electronically

- 50 The Local Government (Democracy) (Wales) Act 2013 (the 2013 Act) requires every local council to make available their contact and membership details, and records of their proceedings via the internet. The 2013 Act also requires every council to publish their register of members' interests, public notices and audited accounts electronically.

- 51 The changes introduced by the 2013 Act are designed to enhance the accountability of local councils to their electorates.
- 52 My audit identified that the Council does not have a website that would allow it to publish notices and other documents electronically.

Recommendations

Exhibit 3: recommendations to the Council are set out below

Recommendations	
R1	The Council must ensure that it maintains a complete cashbook prepared from source documents.
R2	The Council should ensure that the cashbook is properly reconciled with the bank account on a regular basis.
R3	The Council must ensure that it retains all original documents to support payments made.
R4	The Council must ensure that the Statement of Accounts is prepared and approved before 30 June each year.
R5	The Council should ensure that individual Councillors understand their responsibilities for the annual accounts.
R6	The Council should ensure that the accounts are submitted for audit promptly following approval.
R7	The Council must ensure that it complies with the requirements of the Act and the Regulations promptly in relation to the 2015-16 and 2016-17 accounts.
R8	The Council should retain sufficient evidence to demonstrate that it has complied with its statutory duties.
R9	The Council must ensure that it prepares a budget in accordance with the Local Government Finance Act 1992 prior to setting its precept.
R10	The Council should monitor its expenditure against this budget throughout the year eg by quarterly comparisons of expenditure against budget.
R11	The Council must ensure that its decision to issue a precept is recorded in its minutes.
R12	The Council must ensure that it issues a written contract setting out the terms and conditions of employment for the Clerk.
R13	The Council should review the payment of the Clerk's salary to confirm the salary and deductions for tax (including tax on the expenses allowance) have been calculated correctly.

Recommendations	
R14	The Council should ensure that the non-payment of tax to HMRC is regularised and any overdue payments are brought up to date.
R15	The Council must ensure that it maintains proper payroll records and pays the deductions to HMRC promptly.
R16	The Council must ensure that it engages an internal auditor as soon as possible and agrees appropriate terms of reference for the auditor.
R17	The Council must ensure that its minutes are signed by the person presiding at the meeting at which the minutes are approved.
R18	The Council must ensure that it adopts a Code of Conduct for members at the earliest opportunity.
R19	The Council must ensure that it prepares and maintains a register of members' interests.
R20	The Council must ensure that it sets up a website as soon as possible to enable it to comply with the requirements of the Local Government (Democracy) (Wales) Act 2013.
R21	The Council must ensure that it identifies which documents it is required to publish electronically and makes appropriate arrangements to post these on its website promptly.

Next steps

- 53 Section 25 of the Public Audit (Wales) Act 2004 now requires the Council to consider the report at a full meeting of the Council within one month of the date of the report. At the meeting, the Council will need to decide:
- whether the report requires it to take any action;
 - whether the recommendations in the report are to be accepted; and
 - what action (if any) to take in response to the report and recommendations.
- 54 The Council will then need to prepare a written response and agree the wording of that response with me before publishing its response.

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